

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

CARSON CEDRIC DOUGLAS,

Petitioner,

Case No. 3:22-cv-196

vs.

MONTGOMERY COUNTY SHERIFF,

District Judge Michael J. Newman

Magistrate Judge Caroline H. Gentry

Respondent.

ORDER: (1) ADOPTING THE REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE (DOC. NO. 7); (2) DISMISSING PETITIONER'S PETITION FOR A WRIT OF HABEAS CORPUS (DOC. NO. 1) WITHOUT PREJUDICE; (3) DENYING A CERTIFICATE OF APPEALABILITY; (4) CERTIFYING THAT ANY APPEAL WOULD BE OBJECTIVELY FRIVOLOUS AND FINDING THAT *IN FORMA PAUPERIS* STATUS SHOULD BE DENIED ON APPEAL; AND (5) TERMINATING THIS CASE ON THE DOCKET

This case is before the Court on the Report and Recommendation of United States Magistrate Judge Caroline H. Gentry. Doc. No. 7. On August 3, 2022, Judge Gentry entered a Deficiency Order against Petitioner requiring him to either pay the \$5.00 filing fee or file a motion to proceed without prepayment of fees within 30 days. Doc. No. 6, PageID 2. Additionally, Judge Gentry ordered Petitioner to show cause within 30 days why this case should not be dismissed without prejudice as premature or because Petitioner has not exhausted administrative remedies. *Id.* at 4. Judge Gentry also noted that failure to respond within 30 days would result in dismissal for failure to prosecute. *Id.* On October 7, 2022, after receiving no response from Petitioner for over 30 days, Judge Gentry recommended that this case be dismissed under Fed. R. Civ. P. 41(b) for non-prosecution. Doc. No. 7. Under Fed. R. Civ P. 72(b), within 14 days of receiving a copy

of a recommended disposition, a party may file written objections. For over 14 days, no party has filed any objection to the Report and Recommendation.

Upon careful *de novo* consideration of the foregoing, the Court determines that the Report and Recommendation should be adopted. Accordingly, the court hereby **ORDERS** that: (1) the Report and Recommendation is **ADOPTED** in full (Doc. No. 7); (2) Petitioner's petition (Doc. No. 1) is **DISMISSED WITHOUT PREJUDICE**; (3) Petitioner is **DENIED** a certificate of appealability; (4) any appeal is **CERTIFIED** as objectively frivolous and Petitioner should be denied *in forma pauperis* status on appeal; and (5) this case is **TERMINATED** on the Court's docket.

IT IS SO ORDERED.

Date: November 8, 2022

s/ Michael J. Newman
Hon. Michael J. Newman
United States District Judge